

HOUSE No. 1525

By Mr. Fresolo of Worcester, petition of John P. Fresolo relative to long-term care insurance. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT ESTABLISHING STANDARDS FOR LONG-TERM CARE INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The purpose of this act is to promote the public
2 interest and the availability of long-term care insurance policies,
3 to protect applicants for long term care insurance from unfair or
4 deceptive sales or enrollment practices, to establish standards for
5 long-term care insurance, to facilitate public understanding and
6 comparison of long-term care insurance policies, and to promote
7 flexibility and innovation in the development of long-term care
8 insurance coverage.

1 SECTION 2. Chapter 32A of the General Laws is hereby
2 amended by inserting after section 10E, the following section.

3 Section 10F. The commission shall establish a plan of long-
4 term care insurance on the terms and conditions it considers to be
5 in the best interest of the commonwealth and its employees. With
6 respect to any long-term care insurance which is in effect for an
7 employee there shall be withheld from the salary or wages of the
8 employee the premium for the insurance and the commonwealth
9 shall make no contribution to the premium. The commission shall
10 use its best efforts to ensure that all premium payments by
11 employees are eligible for favorable tax treatment available under
12 federal or state law.

1 SECTION 3. Paragraph (b) of Part B of section 3 of chapter 62
2 of the General Laws, as so appearing, is hereby amended by
3 adding the following subparagraph:—

4 (6) In the case of an individual who purchases a qualified long-
5 term care insurance policy, as defined by chapter 176Q, including
6 both nursing facility and home health benefits, an amount equal to
7 100 per cent of the annual premium of the insurance policy not to
8 exceed \$5,000, if the policy has been approved for sale in the
9 commonwealth by the division of insurance. Married individuals
10 filing jointly or separately are each entitled to an exemption from
11 taxable income equal to 100 per cent of the annual premium but
12 not more than \$5,000.

1 SECTION 4. The General Laws are hereby amended by
2 inserting after chapter 176P the following chapter:—

3 **CHAPTER 176Q.**
4 **LONG-TERM CARE INSURANCE.**

5 Section 1. The purpose of this chapter is to promote the public
6 interest and the availability of long-term care insurance policies,
7 to protect applicants for long-term care insurance from unfair or
8 deceptive sales or enrollment practices, to establish standards for
9 long-term care insurance, to facilitate public understanding and
10 comparison of long-term care insurance policies, and to promote
11 flexibility and innovation in the development of long-term care
12 insurance coverage.

13 Section 2. This chapter shall apply to policies delivered, or
14 issued for delivery, in the commonwealth on or after January 1,
15 2005. This chapter is not intended to supersede the obligations of
16 entities subject to this chapter to comply with applicable insurance
17 laws insofar as they do not conflict with this chapter, except that
18 laws and regulations designed and intended to apply to Medicare
19 supplement insurance policies shall apply to long-term care insur-
20 ance.

21 Section 3. This chapter may be known and cited as the “Long-
22 Term Care Insurance Act.”

23 Section 4. Unless the context requires otherwise, the following
24 words and phrases as used in this chapter shall have the following
25 meanings.

26 “Applicant”, in the case of an individual long-term care insur-
27 ance policy, the person who seeks to contract for benefits; or, in

28 the case of a group long-term care insurance policy, the proposed
29 certificate holder.

30 “Certificate”, a certificate issued under a group long-term care
31 insurance policy, which policy has been delivered or issued for
32 delivery within the commonwealth.

33 “Commissioner”, the commissioner of insurance.

34 “Group long-term care insurance”, a long-term care insurance
35 policy that is delivered or issued for delivery within the common-
36 wealth and issued to:

37 (1) one or more employers or labor organizations, or to a trust
38 or to the trustees of a fund established by 1 or more employers or
39 labor organizations, or a combination thereof, for employees or
40 former employees, or a combination thereof, or for members or
41 former members, or a combination thereof, of the labor organiza-
42 tions; or

43 (2) any professional, trade or occupational association for its
44 members or former or retired members, or combination thereof, if
45 the association:

46 (i) is composed of individuals all of whom are, or were,
47 actively engaged in the same profession, trade or occupation; and

48 (ii) has been maintained in good faith for purposes other than
49 obtaining insurance; or

50 (3) an association, or a trust, or the trustees of a fund estab-
51 lished, created or maintained for the benefit of members of one or
52 more associations; but, before advertising, marketing or offering
53 the policy within the commonwealth, the association, or the
54 insurer of the association, shall file evidence with the commis-
55 sioner that the association has at the outset a minimum of 100 per-
56 sons and has been organized and maintained in good faith for
57 purposes other than that of obtaining insurance; has been in active
58 existence for at least 1 year; and have a constitution and bylaws
59 that provide that:

60 (i) the association holds regular meetings not less than annually
61 to further purposes of the members;

62 (ii) except for credit unions, the association collects dues or
63 solicits contributions from members; and

64 (iii) the members have voting privileges and representation on
65 the governing board and committees.

66 Thirty days after the filing, the association shall be considered
67 to have satisfied the organizational requirements, unless the com-
68 missioner makes a finding that the association does not satisfy
69 those organizational requirements.

70 (4) A group other than those described in paragraphs (1), (2)
71 and (3), subject to a finding by the commissioner that:

72 (i) the issuance of the group policy is not contrary to the best
73 interest of the public;

74 (ii) the issuance of the group policy would result in economies
75 of acquisition or administration; and

76 (iii) the benefits are reasonable in relation to the premiums
77 charged.

78 “Long-term care insurance”, any insurance policy or rider: (1)
79 advertised, marketed, offered or designed to provide coverage for
80 not less than 12 consecutive months for each covered person on an
81 expense incurred, indemnity, prepaid or other basis; (2) for one or
82 more necessary or medically necessary diagnostic, preventive,
83 therapeutic, rehabilitative, maintenance or personal care services;
84 and (3) provided in a setting other than an acute care unit of a hos-
85 pital. The term includes group and individual annuities and life
86 insurance policies or riders that provide directly, or supplement,
87 long-term care insurance. The term also includes a policy or rider
88 that provides for payment of benefits based upon cognitive
89 impairment or the loss of functional capacity. The term shall also
90 include qualified long-term care insurance contracts. Long-term
91 care insurance shall not include any insurance policy that is
92 offered primarily to provide basic Medicare supplement coverage,
93 basic hospital expense coverage, basic medical-surgical expense
94 coverage, hospital confinement indemnity coverage, major med-
95 ical expense coverage, disability income or related asset-protec-
96 tion coverage, accident only coverage, specified disease or
97 specified accident coverage, or limited benefit health coverage.

98 With regard to life insurance, this term shall not include life
99 insurance policies that accelerate the death benefit specifically for
100 1 or more of the qualifying events of terminal illness, medical
101 conditions requiring extraordinary medical intervention or perma-
102 nent institutional confinement, and that provide the option of a
103 lump-sum payment for those benefits and where neither the bene-
104 fits nor the eligibility for the benefits is conditioned upon the

105 receipt of long-term care. Notwithstanding any other provision of
106 this chapter, any product advertised, marketed or offered as long-
107 term care insurance shall be subject to this chapter.

108 “Policy”, any policy, contract, subscriber agreement, rider or
109 endorsement delivered or issued for delivery within the common-
110 wealth by an insurer authorized to issue policies upon the lives of
111 persons in the commonwealth or to provide accident and health
112 insurance under chapter 175; a fraternal benefit society authorized
113 under chapter 176; a nonprofit hospital service corporation autho-
114 rized under chapter 176A, a nonprofit medical service corporation
115 authorized under chapter 176B or a health maintenance organiza-
116 tion authorized under chapter 176G.

117 (1) “Qualified long-term care insurance contract” or “federally
118 tax-qualified long-term care insurance contract” an individual or
119 group insurance contract that meets the requirements of
120 Section 7702B(b) of the Internal Revenue Code of 1986, as
121 amended, as follows:

122 (a) The only insurance protection provided under the contract is
123 coverage of qualified long-term care services. A contract shall not
124 fail to satisfy the requirements of this subparagraph by reason of
125 payments being made on a per diem or other periodic basis
126 without regard to the expenses incurred during the period to which
127 the payments relate;

128 (b) The contract does not pay or reimburse expenses incurred
129 for services or items to the extent that the expenses are reim-
130 bursable under Title XVIII of the Social Security Act, as
131 amended, or would be so reimbursable but for the application of a
132 deductible or coinsurance amount. The requirements of this sub-
133 paragraph do not apply to expenses that are reimbursable under
134 Title XVIII of the Social Security Act only as a secondary payor.
135 A contract shall not fail to satisfy the requirements of this sub-
136 paragraph by reason of payments being made on a per diem or
137 other periodic basis without regard to the expenses incurred
138 during the period to which the payments relate;

139 (c) The contract is guaranteed renewable, within the meaning of
140 section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as
141 amended;

142 (d) The contract does not provide for a cash surrender value or
143 other money that can be paid, assigned, pledged as collateral for a
144 loan, or borrowed except as provided in paragraph (e);

145 (e) All refunds of premiums, and all policyholder dividends or
146 similar amounts, under the contract are to be applied as a reduc-
147 tion in future premiums or to increase future benefits, except that
148 a refund on the event of death of the insured or a complete sur-
149 render or cancellation of the contract cannot exceed the aggregate
150 premiums paid under the contract; and

151 (f) The contract meets the consumer protection provisions set
152 forth in Section 7702B(g) of the Internal Revenue Code of 1986,
153 as amended.

154 (2) “Qualified long-term care insurance contract” or “federally
155 tax-qualified long-term care insurance contract” also means the
156 portion of a life insurance contract that provides long-term care
157 insurance coverage by rider or as part of the contract and that sat-
158 isfies the requirements of Sections 7702B(b) and (e) of the
159 Internal Revenue Code of 1986, as amended.

160 Section 5. No group long-term care insurance policy may be
161 offered to a resident of the commonwealth under a group policy
162 issued in another state to a group described in clause (4) of the
163 definition of “Group long-term care insurance” of section 4,
164 unless the commonwealth or another state having statutory and
165 regulatory long-term care insurance requirements substantially
166 similar to those adopted in the commonwealth has made a deter-
167 mination that the requirements set forth in said clause (4) have
168 been met.

169 Section 6. (a) The commissioner shall promulgate regulations
170 that include standards for full and fair disclosure setting forth the
171 manner, content and required disclosures for the sale of long-term
172 care insurance policies and certificates, terms of renewability, ini-
173 tial and subsequent conditions of eligibility, non-duplication of
174 coverage provisions, coverage of dependents, pre-existing condi-
175 tions, termination of insurance, continuation or conversion, proba-
176 tionary periods, limitations, exceptions, reductions, elimination
177 periods, requirements for replacement, offer of inflation protec-
178 tion, recurrent conditions and definitions of terms.

179 (b) A long-term care insurance policy shall not:

180 (1) be cancelled, non-renewed or otherwise terminated on the
181 grounds of the age or the deterioration of the mental or physical
182 health of the insured individual or certificate holder;

183 (2) contain a provision establishing a new waiting period in the
184 event existing coverage is converted to, or replaced by, a new or
185 other form within the same company, except with respect to an
186 increase in benefits voluntarily selected by the insured individual
187 or group policyholder; or

188 (3) provide coverage for skilled nursing care only or provide
189 significantly more coverage for skilled care in a facility than cov-
190 erage for lower levels of care.

191 (c) (1) A long-term care insurance policy, or certificate other
192 than a policy or certificate thereunder, issued to a group as defined
193 in clause (1) of the definition of “Group long-term care” of
194 section (4) shall not use a definition of “pre-existing condition”
195 that is more restrictive than the following: Pre-existing condition
196 means a condition for which medical advice or treatment was rec-
197 ommended by, or received from a provider of health care services,
198 within 24 months preceding the effective date of coverage of an
199 insured person.

200 (2) A long-term care insurance policy or certificate other than a
201 policy or certificate thereunder issued to a group as defined in
202 clause (1) of the definition of “Group long-term care” of section
203 (4) shall not exclude coverage for a loss or confinement that is the
204 result of a pre-existing condition unless the loss or confinement
205 begins within 6 months following the effective date of coverage of
206 an insured person.

207 (3) Notwithstanding this subsection (c), an insurer may use an
208 application form designed to elicit the complete health history of
209 an applicant, and, on the basis of the answers on that application,
210 underwrite in accordance with that insurer’s established under-
211 writing standards. Unless otherwise provided in the policy or cer-
212 tificate, a pre-existing condition, regardless of whether it is
213 disclosed on the application need not be covered until the waiting
214 period described in subsection (2) expires. No long-term care
215 insurance policy or certificate may exclude or use waivers or
216 riders of any kind to exclude, limit or reduce coverage or benefits
217 for specifically named or described pre-existing diseases or phys-
218 ical conditions beyond the waiting period described in
219 subsection (2).

220 (d) A long-term care insurance policy shall not be delivered or
221 issued for delivery in this state if the policy:

222 (1) conditions eligibility for any benefits on a prior hospitaliza-
223 tion requirement;

224 (2) conditions eligibility for benefits provided in an institu-
225 tional care setting on the receipt of a higher level of institutional
226 care; or

227 (3) conditions eligibility for any benefits other than waiver of
228 premium, post-confinement, post-acute care or recuperative bene-
229 fits on a prior institutionalization requirement.

230 (e) The commissioner may adopt regulations establishing loss
231 ratio standards for long-term care insurance policies provided that
232 a specific reference to long-term care insurance policies is con-
233 tained in the regulation.

234 (f) Long-term care insurance applicants shall have the right to
235 return the policy or certificate within 30 days of its delivery and to
236 have the premium refunded if, after examination of the policy or
237 certificate, the applicant is not satisfied for any reason. Long-term
238 care insurance policies and certificates shall have a notice promi-
239 nently printed on the first page or attached thereto stating in sub-
240 stance that the applicant shall have the right to return the policy or
241 certificate within 30 days of its delivery and to have the premium
242 refunded if, after examination of the policy or certificate, other
243 than a certificate issued pursuant to a policy issued to a group
244 defined in clause (1) of the definition of “Group long-term care”
245 of section (4), the applicant is not satisfied for any reason. This
246 subsection shall also apply to denials of applications and any
247 refund must be made within 30 days of the return or denial.

248 (g) (1) An outline of coverage shall be delivered to a prospec-
249 tive applicant for long-term care insurance at the time of initial
250 solicitation through means that prominently direct the attention of
251 the recipient to the document and its purpose. In the case of pro-
252 ducer solicitations, an insurance producer shall deliver the outline
253 of coverage prior to the presentation of an application or enroll-
254 ment form. In the case of direct response solicitations, the outline
255 of coverage shall be presented in conjunction with any application
256 or enrollment form. In the case of a policy issued to a group
257 defined in clause (1) of the definition of “Group long-term care”
258 of section 4, an outline of coverage shall not be required to be
259 delivered, provided that the information described in subsections
260 (i) to (vi) of this section, inclusive, is contained in other materials

261 relating to enrollment. Upon request, these other materials shall be
262 made available to the commissioner.

263 (2) The commissioner shall prescribe a standard format,
264 including style, arrangement and overall appearance, and the con-
265 tent of an outline of coverage. The outline of coverage shall
266 include:

267 (i) a description of the principal benefits and coverage provided
268 in the policy or certificate;

269 (ii) a statement of the principal exclusions, reductions and lim-
270 itations contained in the policy or certificate;

271 (iii) a statement of the terms under which the policy or certifi-
272 cate, or both, may be continued in force or discontinued, including
273 any reservation in the policy of a right to change premium; contin-
274 uation or conversion provisions of group coverage shall be specif-
275 ically described;

276 (iv) a statement that the outline of coverage is a summary only,
277 not a contract of insurance, and that the policy or group master
278 policy contains governing contractual provisions;

279 (v) a description of the terms under which the policy or certifi-
280 cate may be returned and premium refunded;

281 (vi) a brief description of the relationship of cost of care and
282 benefits; and

283 (vii) a statement that discloses to the policyholder or certificate
284 holder whether the policy is intended to be a federally tax-quali-
285 fied long-term care insurance contract under 7702B(b) of the
286 Internal Revenue Code of 1986, as amended.

287 (h) A certificate issued pursuant to a group long-term care
288 insurance policy that is delivered or issued for delivery in this
289 state shall include:

290 (1) a description of the principal benefits and coverage pro-
291 vided in the policy;

292 (2) a statement of the principal exclusions, reductions and limi-
293 tations contained in the policy; and

294 (3) a statement that the group master policy determines gov-
295 erning contractual provisions and that the policy is available for
296 viewing in the offices of the policyholder and will be copied for
297 the certificate holder upon request at no cost.

298 (i) If an application for a long-term care insurance contract or
299 certificate is approved, the issuer shall deliver the contract or cer-

300 tificate of insurance to the applicant no later than 30 days after the
301 date of approval.

302 (j) At the time of policy delivery, a policy summary shall be
303 delivered for an individual life insurance policy that provides
304 long-term care benefits within the policy or by rider. In the case of
305 direct response solicitations, the insurer shall deliver the policy
306 summary upon the applicant's request, but regardless of request
307 shall make delivery no later than at the time of policy delivery. In
308 addition to complying with all applicable requirements, the sum-
309 mary shall also include:

310 (1) an explanation of how the long-term care benefit interacts
311 with other components of the policy, including deductions from
312 death benefits;

313 (2) an illustration of the amount of benefits, the length of ben-
314 efit, and the guaranteed lifetime benefits if any, for each covered
315 person;

316 (3) any exclusions, reductions and limitations on benefits of
317 long-term care;

318 (4) a statement indicating whether any long-term care inflation
319 protection option required by law is available under this policy;

320 (5) if applicable to the policy type, the summary shall also
321 include:

322 (i) a disclosure of the effects of exercising other rights under
323 the policy;

324 (ii) a disclosure of guarantees related to long-term care costs of
325 insurance charges; and

326 (iii) current and projected maximum lifetime benefits; and

327 (6) the policy summary listed above may be incorporated into a
328 basic illustration or into the life insurance policy summary which
329 is required to be delivered in accordance with applicable regula-
330 tion.

331 (k) Any time a long-term care benefit, funded through a life
332 insurance vehicle by the acceleration of the death benefit, is in
333 benefit payment status, a monthly report shall be provided to the
334 policyholder. The report shall include:

335 (1) any long-term care benefits paid out during the month;

336 (2) an explanation of any changes in the policy, e.g. death bene-
337 fits or cash values, due to long-term care benefits being paid out;
338 and

339 (3) the amount of long-term care benefits existing or remaining.

340 (1) If a claim under a long-term care insurance contract is
341 denied, the issuer shall, within 60 days of the date of a written
342 request by the policyholder or certificate holder, or a representa-
343 tive thereof:

344 (1) provide a written explanation of the reasons for the denial;
345 and

346 (2) make available all information directly related to the denial.

347 (m) Any policy or rider advertised, marketed or offered as long-
348 term care or nursing home insurance shall comply with the provi-
349 sions of this chapter.

350 Section 7. (a) For a policy or certificate that has been in force
351 for less than 6 months an insurer may rescind a long-term care
352 insurance policy or certificate or deny an otherwise valid long-
353 term care insurance claim upon a showing of misrepresentation
354 that is material to the acceptance for coverage.

355 (b) For a policy or certificate that has been in force for at least
356 6 months but less than 2 years an insurer may rescind a long-term
357 care insurance policy or certificate or deny an otherwise valid
358 long-term care insurance claim upon a showing of misrepresenta-
359 tion that is both material to the acceptance for coverage and which
360 pertains to the condition for which benefits are sought.

361 (c) After a policy or certificate has been in force for 2 years it is
362 not contestable upon the grounds of misrepresentation alone; the
363 policy or certificate may be contested only upon a showing that
364 the insured knowingly and intentionally misrepresented relevant
365 facts relating to the insured's health.

366 (d) A long-term care insurance policy or certificate shall not be
367 field issued based on medical or health status. For purposes of
368 this subsection the term "field issued" means a policy or certifi-
369 cate issued by an agent or a third-party administrator pursuant to
370 the underwriting authority granted to the agent or third party
371 administrator by an insurer.

372 (e) If an insurer has paid benefits under the long-term care
373 insurance policy or certificate, the insurer may not recover the
374 benefit payments if the policy or certificate is rescinded.

375 (f) In the event of the death of the insured, this section shall not
376 apply to the remaining death benefit of a life insurance policy that
377 accelerates benefits for long-term care. In this situation, the

378 remaining death benefits under these policies shall be governed by
379 section 132 of chapter 175 of the General Laws. In all other situa-
380 tions, this section shall apply to life insurance policies that accel-
381 erate benefits for long-term care.

382 Section 8. (a) Except as provided in subsection (b), a long-term
383 care insurance policy shall not be delivered or issued for delivery
384 in this state unless the policyholder or certificate holder has been
385 offered the option of purchasing a policy or certificate that
386 includes a non-forfeiture benefit. The offer of a non-forfeiture
387 benefit may be in the form of a rider that is attached to the policy.
388 In the event the policyholder or certificate holder declines the
389 non-forfeiture benefit, the insurer shall provide a contingent ben-
390 efit upon lapse that shall be available for a specified period of
391 time following a substantial increase in premium rates.

392 (b) When a group long-term care insurance policy is issued, the
393 offer required in subsection (a) shall be made to the group policy-
394 holder. However, if the policy is issued as group long-term care
395 insurance to a group defined in clause (4) the definition of “Group
396 long-term care” of section 4, other than to a continuing care retire-
397 ment community or other similar entity, the offering shall be made
398 to each proposed certificate holder.

399 (c) The commissioner shall promulgate regulations specifying
400 the type or types of non-forfeiture benefits to be offered as part of
401 long-term care insurance policies and certificates, the standards
402 for non-forfeiture benefits, and the rules regarding contingent ben-
403 efit upon lapse, including a determination of the specified period
404 of time during which a contingent benefit upon lapse will be
405 available and the substantial premium rate increase that triggers a
406 contingent benefit upon lapse as described in subsection a.

407 Section 9. The commissioner shall promulgate reasonable regu-
408 lations in accordance with chapter 30A to promote premium ade-
409 quacy and to protect the policyholder in the event of substantial
410 rate increases, and to establish minimum standards for marketing
411 practices, agent compensation, agent testing, penalties and
412 reporting practices for long term care insurance.

413 Section 10. In addition to the penalties provided in chapters 175
414 and 176D, any insurer and any insurance producer found to have
415 violated any requirement of this chapter or any regulations pro-
416 mulgated hereunder, relating to the regulation of long-term care

417 insurance or the marketing of such insurance, shall be subject to a
418 fine of up to 3 times the amount of any commissions paid for each
419 policy involved in the violation or up to \$10,000, whichever is
420 greater.